

Congress of the United States
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October 26, 2023

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear President Biden:

I am writing to request that you use the Administration's current regulatory authority to immediately close the "de minimis" Section 321 trade provision for all e-commerce imports.

First established under the Tariff Act of 1930, Section 321 has failed to adapt to the modern commercial marketplace, including the pervasive use of e-commerce to ship individually packaged goods from virtually any global source directly to American consumers. This outdated and now dangerous provision is allowing direct mail shipments to cross our borders vastly uninspected – facilitating the illegal importation of deadly fentanyl and other illicit drugs that are destroying families, communities, and wreaking havoc on our medical institutions. Not only are Section 321 de minimis shipments enabling the importation of dangerous products that put consumers at risk, they also make it virtually impossible to enforce the Uyghur Forced Labor Prevention Act (UFLPA).

Customs & Border Protection (CBP) reports that nearly 3 million de minimis shipments are coming into the United States each day, tariff free. In Fiscal Year 2023, the U.S. received more than 1 billion individual packages claiming de minimis preferences, an increase of nearly 700 percent from the 150 million packages that entered via de minimis in 2016.

This exponential growth in Section 321 imports is the direct consequence of faulty CBP rulings that have allowed mass distributors to utilize e-commerce to facilitate millions of de minimis shipments that land on U.S. doorsteps each day. It defies basic common sense to pretend that the billions of dollars in these duty-free shipments transacted each day are actually "de minimis". They are not de minimis to U.S. manufacturers who are seeing a substantial erosion of market share; U.S. workers who are losing their jobs; small retailers who can no longer compete; and free trade agreement (FTA) partners who are being displaced from the U.S. market.

This out-of-control problem is impacting the safety and livelihoods of Americans while rewarding drug traffickers and forced labor supply chains in China and displacing critical domestic manufacturing industries. Importantly, it is my strong view that the Executive Branch has express authority to impose necessary guardrails around the Section 321 de minimis

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provision, and such action is urgently needed to reinstate the rule of law for the American businesses and consumers being harmed by this loophole in U.S. trade law.

Under the entry procedures for de minimis shipments, CBP has absolutely no visibility into the parties to the transaction and very little useful data to aid enforcement activity. A shipping manifest is all that is needed, but it does not have to contain any information as to the country of origin or specific information on the product contained. This lack of basic and important information limits CBP's ability to identify and interdict high-risk shipments that may contain narcotics, merchandise that poses a substantial risk to public health and safety, counterfeits, or other contraband.

Of specific note:

- CBP plainly states that it does not have necessary data to do its job for de minimis shipments: In June 2023, CBP stated that “The overwhelming volume of small packages and lack of actionable data limit CBP’s ability to identify and interdict high-risk shipments that may contain narcotics, merchandise that poses a risk to public safety, counterfeits, or other contraband. In FY 2022, CBP cleared over 685 million de minimis shipments with insufficient data to properly determine risk.”
- A billion de minimis shipments “incredibly challenging” to screen: “Due to e-commerce, the volume of [de minimis] shipments has skyrocketed... Through August 29th of this current fiscal year, CBP has cleared about 976 million de minimis shipments and is tracking to exceed a billion shipments for the first time ever,” which he noted makes “screening these shipments and ferreting out contraband incredibly challenging.” – Troy A. Miller, CBP’s senior official performing the duties of the commissioner (CBP Blog Spotlight: September 2023)
- Fentanyl traffickers seek to mimic normal e-commerce shipments to avoid U.S. Customs and Border Protection (CBP) detection. Fentanyl traffickers often declare their international shipments as relatively low-value consumer goods and send them to mail centers or other addresses not associated with the criminal organization. (State Department, p.4)

Furthermore, de minimis is undermining domestic manufacturers, offshoring jobs, and rewarding Chinese and other e-commerce companies eager to exploit this rule. This provision is also harming our Western Hemisphere free trade partners dependent on preferential access to the U.S. market, exacerbating the migration crisis.

For example, the U.S. textile industry serves as a critical supplier of yarns and fabrics to the Western Hemisphere apparel production chain – that collectively employs 2 million workers in the U.S. and in Western Hemisphere FTA countries. This critical hemispheric textile and apparel industry is now facing enormous economic uncertainty as a result of the failure to close this

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damaging provision. Not only is this supply chain essential to the economic health of our hemisphere, but these are also the very companies that converted production overnight to manufacture lifesaving PPE at the height of the COVID pandemic.

The virtual impossibility of identifying the origin and contents of these shipments puts them at an elevated risk of violating UFLPA. They also legally escape the 301 penalty tariffs on Chinese imports as well as regular import duties designed to safeguard import-sensitive sectors. As a result, not only is de minimis allowing China to evade 301 penalty duties and skirt UFLPA enforcement, China effectively has a free trade agreement style duty-free access to the U.S. market for products under \$800. This generous gift comes with no rule of origin requirements, no reciprocal market access, or labor or environmental standards, while allowing China and others utilizing de minimis to get away with a host of trade infractions that are undermining U.S. manufacturing.

The congressionally created bipartisan U.S.-China Economic and Security Commission detailed in a recent report, the substantial rise of Chinese e-commerce retailers Shein and Temu who built multi-billion companies based on the de minimis shipping model, noting: "Current customs and tariff levels disproportionately benefit Chinese e-commerce firms. The de minimis exemption level of \$800 allows for packages shipped to the United States under that level to avoid inspection and existing tariffs. Shein and other e-commerce firms are uniquely positioned to exploit this exemption, as their products are shipped individually and nearly all fall below the de minimis threshold."

In closing, I reiterate the urgency of the problem and the need for swift action. The situation has reached a tipping point, and I urge the Administration to take all immediate necessary action for the health and safety of our people and of our industries. I appreciate your attention to this important request and are prepared to work with your staff and with relevant Executive Branch agencies to institute much-needed reforms to resolve this massive and growing problem.

Blessings and Liberty,

A handwritten signature in blue ink that reads "Jeff Duncan". The signature is stylized with a large, sweeping initial "J" and a cursive "Duncan".

Jeff Duncan
Member of Congress